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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,284	03/18/2004	Leonard Reiffel	BANG2 CON	5642

7590 04/21/2005  
William J. Hallihan, Esq.  
HALLIHAN Intellectual Property Law, Ltd.  
Suite 2080  
125 South Wacker Drive  
Chicago, IL 60606

EXAMINER
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LEE, DIANE I

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/803,284	Applicant(s) REIFFEL, LEONARD	
	Examiner D. I. Lee	Art Unit 2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 1230 and 28 January 2005.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-8 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/15/04 &amp; 1/21/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 28 January 2005 in response to Notice of Non-compliant letter (mail date: 1/18/05), wherein the Notice of Non-compliant letter was for the Amendment (file date: 12/20/2004), which were considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 for the reason claims were not provided with the proper status identifier.

### *Claim Objections*

2. In the claim section of the Amendment (file date: 1/28/05), statuses of claims 1-8 were identified as "(previously presented)". However, it is noted by the Examiner that claims 1-8 are incorrectly identified in the Amendment (file date: 1/28/05) for it appears that claims 1-8 are not amended, i.e., the specific identifier "(previously presented)" is for the claims that are previously added, amended in the previously filed paper. Since claims 1-8 appears to be the same as the claims filed with original specification (i.e., not added by preliminary amendment and not previously amended), all claims 1-8 should have been identified as "(Original)". Appropriate correction is required.

### *Priority*

3. Although applicant filed this application as a continuation of US patent application Serial No. 10/258,402 filed 23 October 2002 (now U.S. Patent No. 6,708,885), upon review of the parent applications Serial Nos. 10/258,402, the examiner has determined that the currently claimed invention has not been "wholly" disclosed until instant application (i.e., applications Serial No. 10/803,284 filed 18 March 2004). Specifically, the subject matters in claims 2-4 and 6-8. Therefore, the effective filing date for the currently claimed invention is 18 March 2004.

This application repeats a substantial portion of prior Application No. 10/258,402, filed 4/30/01, and adds and claims additional disclosure not presented in the prior application (i.e., the subject matters in

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claims 2-4 and 6-8). Since this application names an inventor or inventors named in the prior application, it may constitute a continuation-in-part of the prior application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

### ***Double Patenting***

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. **Claims 1 and 5 are remain rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 11 of prior U.S. Patent No. 6,708,885. This is a double patenting rejection.**

6. **Claims 2-4 and 6-8 are remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 11-18 of U.S. Patent No. 6,708,885 (referred as Patent'885) in view of Richley [US 6,542,083], Schrottet [US 6,335,685], or McMahon [US 5,789,732].**

Although the conflicting claims are not identical, they are not patentably distinct from each other.

In claim 1 for example, the code light from the code region represent the code and the code light is selected, detected by the react mode of the imager when the locate mode matches the preset value and the detected locate light. The code light in claim 1 provides an identification of the code in the code region to be selected, detected by the react mode. The locate mode of the imager detects the locate light from the locator and causes the react mode to select, detect code light when the locate mode matches the preset value and the detected locate light. The react mode and locate mode of the imager in claim 1 provides the function of optically locating the field of view or target and activating function. This teaching of the code light from the code region represent the code and the code light is selected, detected by the react mode of the imager when the locate mode matches the preset value and the detected locate light is identically taught by Patent'885 in claim 1. The characteristic of the code light from the code region represent the code in claim 1 is interpreted as an optical or light information (optical property or light property) that identifies the code in the code region, and further locate mode and react mode of the imager in claim 1 is interpreted as an optical or light locating and activating means.

Patent'885 fails to teach the code light is in a radio frequency portion of an electromagnetic radiation spectrum and the react mode is a directional antenna.

Richley teaches the code light (tag) having code identification in a radio frequency portion of an electromagnetic pulse of radiation spectrum a directional antenna 17 directed, pointed electronically (using an embedded antenna grid 40) at the tag region by spatial movement for locating the target (see col. 4, lines 16+; col. 5, lines 5+; and figure 1).

McMahon discloses the device having an optical communication, i.e., the use of optical technology, and RF Wireless communication using a radio frequency link similar to the optical method as another form of communication. The difference is the use of electromagnetic energy in the RF spectrum as opposed to the optical spectrum operation (col. 4, lines 50+).

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Schrotte teaches a system with a wireless tag (i.e., an RF tag) attached to the object and a locator (a position detector) that determines the position of the one or more of the tags within a field of the view of the base station. The system captures the data on the tag and determines the position of the respective tag. The system uses a directional antenna 104 pointed at the target region for locating the target in the field of view (see figure 1).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate other known technology of identifying and locating the target as taught by Richley, Schrottet, or McMahon in the imager of Patent '885 in order to provide an active or combination of passive/active system for obtaining the code identification and locating of the target.

#### *Response to Arguments*

7. Applicant argued with respect to the claim to benefit of earlier filed applications that applicant does not concede that the subject matter found in claims 2-4 and 6-8 were not wholly disclosed in parent applications and that applicant has properly claims benefit of the filing date of the prior application since the admission in the Office Action follows the longstanding usage of the term continuation as being broadly defined to include a continuation in part (see page 7, lines 1+ of the Amendment filed 12/30/04). The Examiner respectfully disagrees. The Examiner respectfully requests the Applicant to specifically identify the disclosure of the claimed subject matter in the previous application. Unless Applicant specifically and clearly point out the page and line number of the specification that discloses the claimed subject matters in claims 2-4 and 6-8, such claimed subject matters are considered additional disclosure that are not presented in the prior application. Thus, until applicant points out the specific claimed subject matters are disclosed in the previous application, the effective filing date for the currently claimed invention remains 18 March 2004.

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8. Applicant stated that claims 1 and 5 of the instant application are same as claims 1 and 11 of the applicant's prior US Patent No. 6,708,885, and these two claims will be withdrawn upon allowance of the claims 2-4 and 6-8 (see page 9, lines 3+ of the Amendment filed 12/30/04). However, the statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. Unless applicant cancels or amends the conflicting claims (i.e., claims 1 and 5), the Examiner maintains the statutory type (35 U.S.C. 101) double patenting rejection.

9. Applicant argued with respect to the judicially created doctrine of obviousness-type double patenting rejection is moot because the applicant is willing to file a terminal disclaimer if all other issues are resolved (see page 9, lines 9+ of the Amendment filed 12/30/04). The Examiner respectfully disagrees. Applicant's willingness to file a terminal disclaimer does not suggest the obviousness-type double patenting rejection is moot. The obviousness-type double patenting rejection is moot only when a terminal disclaimer is filed and approved by the Office.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. I. Lee whose telephone number is (571) 272-2399. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. I. Lee  
Primary Examiner  
Art Unit 2876

D. L.